

83-34-2

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April 18, 1983

Carl D. Nelson, D.V.M., Secretary  
Board of Veterinary Medicine  
312 Jordan Road, R.D. #4  
Keene, New Hampshire 03431

Dear Dr. Nelson:

You have requested our opinion whether oral licensing examinations pursuant to RSA 332-B:11 have the same ninety-day notice requirement as the written licensing examinations of RSA 332-B:9. Our opinion is that the ninety-day notice requirement is applicable to all licensing examinations.

You also ask whether a rule passed at a regular State Board of Veterinary Medicine ("Board") meeting but unpublished in the Administrative Rules is enforceable. Our answer to this is that unless the rule has been published pursuant to the Administrative Procedures Act (RSA 541-A), it has no binding legal effect and is therefore unenforceable.

The specific questions you raise involve the licensing procedures of the New Hampshire Veterinary Practice Act ("Act") (RSA 332-B (1981 Supp.)) regarding reciprocity. The Act makes clear that in lieu of a written examination, a person who is lawfully licensed to practice veterinary medicine in another state may be given an oral examination. "The Board may orally or practically examine any person qualifying for licensing under 332-B:11." RSA 332-B:11 (emphasis added).

RSA 332-B:10 sets forth the general requirements that must be met in giving an examination. The statute makes no distinction between an oral or a written examination but rather discusses "examinations" in general:



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The Board shall hold at least one examination during each year and may hold such other additional examinations as are necessary. The Secretary-Treasurer shall give public notice of the time and place for each examination at least ninety days in advance of the date set for the examination...." RSA 332-E:10 (emphasis added).

Since the language of the Act does not differentiate between oral or written examinations, any provision addressing the examination system applies to both. Therefore, the ninety-day notice requirement of RSA 332-B:10 is required for the oral examinations administered pursuant to RSA 332-E:11.

Your second raise a question concerns additional requirements of those persons seeking licensing through reciprocity, specifically, whether in addition to the requirements of RSA 332-B:11 and Administrative Rule 301.01, a person may be required to have successfully completed the Clinical Competency Test (CCT) within the past three years. The Board has the authority to adopt rules pursuant to the Administrative Procedures Act (RSA 541-A) in relation to "the qualifications of applicants in addition to those requirements set by statute." RSA 332-B:7-a,II. Although this rule was passed at a regular Board meeting and was to go into effect January 1, 1983, it has not been published in the Administrative Rules under RSA 332-B:7-a. The requiring of a CCT is such an additional requirement which requires RSA 541-A compliance. Since the rule has not been published as required by the Administrative Procedure Act it has no binding legal effect:

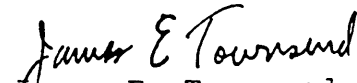
No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed as required by this chapter. RSA 541-A:2,II (Supp. 1981).

In order for the rule to be enforceable you must follow the procedure outlined in RSA 541-A. Until that time, no person requesting licensure through reciprocity may be required to have passed the CCT.

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For the above reasons, we conclude that the ninety-day notice requirement applies to any kind of examination. We also conclude that unless the requirements of RSA 541-A are met no requirements other than those set out in RSA 332-B:11 may be imposed on applicants seeking licensure through reciprocity.

Very truly yours,

  
James E. Townsend  
Assistant Attorney General  
Division of Legal Counsel

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